

[GET YOUR OWN BLOG](#) [FLAG?](#) [NEXT BLOG»](#)[BlogThis!](#)

# Jackwhispers

"Injustice Anywhere Is A Threat To Justice Everywhere" ~ Dr. Martin Luther King

Wednesday, December 28, 2005

## ➔ You Gotta Be Berserk To Use An eBay Listing Company! Pt II

A couple of notes before I begin Part II:

I was served a letter from an attorney representing **Bidzirk**.

In this letter, the following was *alleged*:

1) That I posted **Bidzirk**'s logo without permission and that it is covered under trademark and service mark law. Surely, I posted it, but as a reporter, I have the right to publish it without permission. I am not profitting from this image, nor am I portraying that I sell items from **Bidzirk**. I am also not using the **Bidzirk** logo as my own. The attorney made mention of the Lanham Act, but did not cite the specific reason for quoting this law. The Lanham Act *specifically* excludes my reporting.

Here's the 1st ammendment & [Lanham Act](#) for the attorney and anyone else who wants to challenge my right to publish:

### About Jackwhispers:

[Welcome/Forum Rules](#)

<http://jackwhispers.blogspot.com/2004/09/common-theme-at-jackwhispers.html>

[Reader Reminder](#)

[RSS Newsfeed, Contact, Story](#)

[Suggestions](#)

[Privacy Policy/About](#)



See a unique point of view here? Want

## Article I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The Lanham Act defines the statutory and common law boundaries to trademarks and service marks. Trademarks (and service marks) are words or designs used in the advertising of goods and services. Rights to use a trademark are defined by the class(es) for which the trademark is used. Therefore, it is possible for different parties to use the same trademark in different classes. The Lanham Act defines the scope of a trademark, the process by which a federal registration can be obtained from the Patent and Trademark Office for a trademark, and penalties for trademark infringement.

The following shall not be actionable under this section:

- (A) Fair use of a famous mark by another person in comparative commercial advertising or promotion to identify the competing goods or services of the owner of the famous mark.
- (B) Noncommercial use of a mark.
- (C) All forms of news reporting and news commentary.

So to exercise my rights according to the 1st ammendment and the Lanham Act:

to help spread the word? Consider submitting a headline you see to [MACSURFER](#), to [MACBYTES](#), or to [SLASHDOT](#)

### Jackwhispers Recommends:

No sponsorship or affiliation should be implied





2) The attorney says I am lumping all listing companies into one category and associating all of the problems faced with these companies to Bidzirk; therefore ... libel. I have experienced all of the problems with Bidzirk as I have reported ... how does this attorney think I came up with the list of problems?

3) Objection was taken to my mention of the owner personally; concerning his honeymoon and his difficulty with traffic ... that made him late to our first meeting. The claim is; these remarks are damaging to the owner's business reputation, the remarks were unprofessional, and that mention of his previous business ventures were immaterial and slanted for sensationalism.

I have since updated the 1st installment to include a Greenville Journal link that shows how the owner promoted his business hand in hand (pun intended) with the start up of Bidzirk and his new marriage. It is also pertinent to my situation to convey involvement and how the owner (and other dropoff companies) might be overwhelmed ... and not able to handle business such as we brought to their company. I was promised and reassured several times that this was being handled as fast and as profitable as possible. It is worthy to note that a new marriage deserves dedication ... but that it may have taken away from time to dedicate to our level of customer.



## PART TWO: Fast Talking & Funny Business

eBay ~ Weird AI Yankovic

Download now from \_



I am reporting accurately on what happened to convey what COULD happen to others. My intent in reporting on this is to prevent reoccurrence of the same, not to destroy or damage Bidzirk, and certainly not in revenge. I am merely continuing to report as this site has for 2 years on issues that merit attention. This is a consumer advocacy site.

While listing companies may initially view the article as a deterrent to consumers using them, if they will conform to the practices suggested by this report, they will likely increase the amount of business that they do.

Two good analogies apply in this case.

The first is the consumer group such as Consumers Union (publisher of Consumer Report) that has long reported on car companies and dealers and their various consumer-harming and consumer beneficial practices. One such case was that of the Suzuki Samurai and its rollover problems. That reporting resulted in the Consumers Union getting involved in a very long and expensive lawsuit, but you know what? Suzuki's newest cars don't have this problem anymore and people are purchasing their products as a result. Had they continued the Samura line as is, they might be out of business by now. Had they responded to the CU by saying that they would do anything and everything to remedy the problem, they would

Don't have time or don't know how to load your iPod with your music collection? Don't want some stranger in your house who isn't certified, bonded, or licensed? Don't appreciate the brain numbing hype of the "other services". Try RipDigital - because everyone else are just Rip Offs!



Buy iPods preloaded with your CD collection.

20 GB iPod + 100 CDs preloaded: **\$399**

20 GB iPod + 200 CDs preloaded: **\$499**

20 GB iPod + 300 CDs preloaded: **\$599**

**RipDigital can load your iPod for you for just \$129 for 100 CDs & \$199 for 200 CDs**



\* RATED BEST IPOD LOADING SERVICE  
JUNE 2005 POPULAR MECHANICS



Why pay \$499 for Microsoft Office when you can do everything Office can do for just 10% of the cost? Create Office compatible files for Word, PowerPoint, & Excel with ThinkFree Office. Try it online for **free** or buy the Mac, Linux, & PC compatible version for just **\$49.99!**

Amazon Honor System

probably be in even better shape as a company. They only did half of that and are probably only reaping half of the benefit. The CU has continued to report as they always have and have made note when Suzuki produced cars that did not demonstrate these same problems. I think it is more than fair to say that the entire automotive industry took note of this and that consumers have become very well protected against what could have been a rollover epidemic. SUVs have certainly soared in popularity despite this reporting, so I think everyone benefited from the CU report. THAT is exactly what I am trying to do here. I'm reporting for the benefit of both the listing companies and the consumers involved.

The second analogy concerns the other practice that Americans have long made use of to sell things that they own: Real Estate. Think of what would happen if realtors started incorporating various fees into their billing aside from the 6% flat fee that represented their commission and that the total cost of selling a home started to approach 20%. People would be in an uproar, not because of the principle, but because of the outrageous amount of money that they would be losing. Most people are willing to shrug off a \$25 loss on a \$75 piece of collectible something or other and simply not ever use the service again. People will not shrug off a loss of \$10,000, however. In both cases, you feel you were misled. One is actionable, the other not.

One other legal issue, concerning this situation, that will be expanded on in Part III, concerns our final meeting with **Bidzirk** (to collect monies that were 4 months overdue). No longer wishing to negotiate with **Bidzirk**, and exhausted by delay after delay, I informed the owner I wanted a quick 5



Philosophy

Apple Shampoo

[CLICK TO BUY](#)

[FROM AMAZON](#)





minute meeting ... complaint/check/shake hands. I informed him of this several times. I also informed him that we were ready to throw in the towel with them and just wanted to part ways, but felt like we had enough grounds for breach of contract lawsuit on grounds of contract to sell, delayed payments without interest, underperformance from advertised "top dollar auctions", and for nondisclosure of full fee structure.

At this meeting, the owner brought in an accountant that was a recent hire and they proceeded to lay out paper after paper after paper. (Appearing to be laying out ways they were NOT going to compensate us fairly) I took exception to this ... reminded the owner of the *5 minute meeting request* ... he became angered ... I got upset (not to mention embarrassed) and he handed over a check after I used the term "*robbery*" and conveying that we felt robbed after receiving in some cases \$2-\$3 for laptop cases that sold for \$17-\$25 ... and that we regularly sold these in our store for \$16.00 each and regularly sold damaged cases at the local flea market for \$5, \$7, and \$10.

So ... the owner hands me a check and tells me to read the back of it ... (Handwritten) "*Cashing or Deposit of this check constitutes settlement between both parties*"

So, **Bidzirk** came into this meeting already on the defensive.

My attorney states the following:

*"Presenting a check with a handwritten notice (on the check) can not in any way make the check less liquid than immediate cash ... said check; given to anyone without an attorney present, or without previous typewritten*



#### Reference:

[Your Rights, The Law, & Litigation](#)

[Apple/Apple Related Recalls & Safety Warnings](#)

[Patents, Copyrights, Trademarks, Service Marks](#)

[Attorney General Phone #'s By State](#)

[The Top 100 Movies Of All Time](#)

[Recording Phone Calls Laws State By State](#)

[Apple Model History](#)

[JackLooks Archive](#)

[Jack Classics Archive](#)

[JackWords Archive](#)

*notarized notice from an attorney is not binding. Further, it could be prosecuted as a post dated check. Checks are meant to be as liquid as cash and under banking law to have no restrictions unless monies provided are a loan, or the other party states agreement BY WRITTEN NOTICE and signature on a separate notarized agreement"*

I am using this article and heavily promoting it for listing companies to take notice. Hopefully, **Bidzirk** will change it's policies and learn from this experience as well.

I am not discouraging anyone from using listing companies ...

I am encouraging them with my story to understand expectations ... but more importantly know what to expect... and to get a fair and unilaterally agreeable contract.











I want to put all subjects of my editorials on notice (in this case **Bidzirk**) ... threatening legal action over my right to publish truthful information is the wrong choice ... it exposes you to even more critique (elsewhere) and only serves to strengthen my point of view. My attorney is my most avid reader ... he warns me if anything I say crosses the line ... but in reality ... he has yet to warn me ... because I always tell the truth and have facts, letters, links, witnesses, and recorded phone calls to back everything up.

Before any business threatens an individual over exposure of their business or their name; they should be aware of The 1st Ammendment, The Lanham Act, and [Electronic Communications Privacy Act](#).

Tomorrow: **Part III: UnFast & UnFun**

Don't forget! At the end I plan to provide a checklist that you

## Previous Posts

-  [Special Report: You Gotta Be Berserk To Use An eBay Listing Company!](#)
-  [Jack Classic: Paypal Ain't My Buddy](#)
-  [MACSUPPORT.CA : The CA Stands For "Can't Do Apple"](#)
-  [New Feature: Jack Does Know Jack: Paypal: Is You Is Or Is You Ain't My Buddy?](#)
-  [More Garbage From The Garage](#)
-  [Merry Christmas! From Jackwhispers!](#)
-  [Jackwhispers Helps Stuff Your Stocking!](#)
-  [MP3 Shuffle: 99.7% Pure Copycat](#)
-  [Stupidity Is Not Invisible ...](#)
-  [New Feature Story Coming Soon ...](#)

can use to take to a listing company to assist you in getting a fair and profitable agreement to sell your items.

posted by JackWhispers @ [11:50 PM](#) [0 comments](#) \_

### 0 Comments:

[Post a Comment](#)

[<< Home](#)

All Jackwhispers content is editorial & educational. © CopyLeft Jackwhispers 2005

Free 2 quote & free 2 use - just mention [jackwhispers.com](http://jackwhispers.com) if you use the news